Supreme Court, U.S.
FILED
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CLERK

No. 97-76

In The

Supreme Court of the United States

October Term, 1996

SOL GROSS, Trustee of PANTHER HOLLOW CORPORATION and PANTHER HOLLOW CORPORATION,

Petitioners,

v.

THE CITY OF PITTSBURGH,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF OF RESPONDENT IN OPPOSITION

GEORGE R. SPECTER
Counsel of Record
Deputy City Solicitor
JACQUELINE R. MORROW
City Solicitor

City of Pittsburgh
Department of Law
313 City-County Building
Pittsburgh, PA 15219
(412) 255-2019

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals err in concluding that Sol Gross was not entitled to nominal damages, or any damages as the jury found, even though the jury found that his constitutional rights had been violated?

2. Did the Court of Appeals err in concluding that the verdict was against the overwhelming weight of the evidence?

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STATEMENT OF THE CASE

The following are the relevant facts, which together with actions of State and County authorities acting independently of and initially without any knowledge of the Respondent City of Pittsburgh, resulted in the Court of Appeals concluding that "the liability verdict in favor of Panther Hollow was against the overwhelming weight of the evidence". (Pet., 4a).

Petitioners, Panther Hollow Corporation ("PHC") and Sol Gross, an individual, filed an action under 42 U.S.C. § 1983 alleging that the City violated (1) PHC's civil rights by revoking a Land Operations Permit ("Permit") for construction of a parking lot without legal justification therefor; and (2) violating Sol Gross' civil rights by filing a citation against him in City Magistrate's Court for conducting land operations without a Permit, when at the time a Permit in favor of PHC was outstanding. The jury found that filing of the charge violated Mr. Gross' civil rights, but awarded him no damages.

PHC acquired the subject property from CSX Railroad on February 28, 1989, when there was outstanding against CSX a citation by the City's Bureau of Building Inspection ("BBI") to clean up the property because CSX had permitted an accumulation of debris. In May, 1989, Ace Demolition Co., ("Ace") owned by the same shareholders who own PHC, contracted with CSX to do the clean up work. Ace completed the work on June 15, 1989, but then conducted substantial land operations without a Permit. On July 20, 1989, due to complaints from neighbors, the City learned that PHC was hauling fill onto the site without a Permit. Following newspaper articles and a

warning from BBI, PHC stopped the illegal hauling. On July 27, 1989 PHC applied for and on July 28, 1989 received a Permit. The Application contained a representation that PHC's surveyor would be the Special Inspector, whose function it was under the City Ordinance to inspect the land operations, report weekly and make certain that the operations were being conducted in accordance with the Application and applicable law. *Despite such representation, the Special Inspector made no inspection, made no reports and failed completely to conform to law.* On May 16, 1989, Panther Hollow applied for a parking lot permit. The Application contained a question as to whether the property was located in a landslide prone area, which it was, but PHC represented that it was not. That misrepresentation later became relevant because there was a landslide during PHC's operations.

On July 20, 1989, the Allegheny County Health Department, responding to neighborhood complaints, investigated PHC's activities and found that the land operations had destroyed two sewage systems of adjoining property owners, thereby *causing raw sewage in the form of human fecal matter to discharge upon the property of the neighbors and PHC.* The discharge was patently visible, but PHC refused to take any action to clean it up, or to permit public officials to enter upon the property to clean it up. The Health Department as it had the legal right to do, directed the City to take appropriate action to terminate violations of the County Health Code. In addition, the County inspection determined and the City was so advised that PHC created an excessive overburden on the property and was otherwise in violation of County Ordinances and State statutes and regulations. Further, an

adjoining hillside under a major City street was sliding endangering the street and homes on the hillside. In response to a referral from the County Health Department, the State Department of Environmental Resources ("DER") conducted an inspection on July 27, 1989, and cited PHC and Ace for violations of the State Stormwater Management Act and DER statutes and regulations regarding erosion and sedimentation controls. *Despite such citations, neither PHC nor Ace ever took any action to abate the violations.*

PHC buried a City water line under an excessive amount of fill and after warnings by the Water Department, PHC agreed to relocate the line. Despite its agreement, it never submitted plans nor took any action to effect the relocation. PHC buried manholes which provided access to a storm sewer, and placed ten to twelve feet of fill around a fire hydrant so that a hose could not be attached to it. These actions were the subject of numerous complaints from neighbors and newspaper publicity. Subsequent to July 27, 1989, in response to neighbor complaints, various City officials and employees inspected the property, and the County Health Department continued to direct the Mayor to abate the violations, and finally recommended to the City that the Permit be revoked.

In an effort to resolve the dispute, a meeting was held on September 21, 1989, as a result of which PHC continued construction, *but there was no discussion of the sewage discharge problem, the DER violations or resolution of the instability of the hillside.*

In October, 1989, PHC applied for a Temporary Occupancy Permit to open its parking lot. The application was granted, but was signed by Paul Imhoff, chief of BBI, even though the Application required approval by a Senior Inspector of BBI.

In October, 1989, a City environmental engineer inspected the property and found serious violations of the City Code, State statutes and regulations, County health regulations, and among other things that PHC had moved more than 16,000 cubic yards of material, which was an amount that required a Conditional Use Application under the City's Zoning Code for land operations of that magnitude. On October 24, 1989, the County Health Department held a meeting attended by Health Department employees and City employees, and at that meeting the County specifically recommended that the City consider revocation of the Permit. That recommendation was set forth in a letter of November 9, 1989 to the Mayor (App. 1).

On November 6, 1989, a meeting of City officials involved in various aspects of the matter met and a consensus was reached to revoke the Permit, which was done by letter of November 9, 1989. (Pet. 87a)

The Complaint named as defendants the City, various City officials, a number of neighborhood residents and several neighborhood community groups. Summary judgment was granted in favor of the individual residents and neighborhood groups, and the individual City defendants because they were acting in their official capacities.

Certain state proceedings are also relevant. On December 1, 1989, for reasons of public safety, the City

placed jersey barriers around a portion of the property, and PHC filed in the Court of Common Pleas of Allegheny County a Petition for the Appointment of a Board of View alleging a de facto taking resulting from placement of the barriers. The City filed Preliminary Objections to the Petition. No action was taken by either party until March 8, 1996, three days before the damage verdict in the federal case, when the City withdrew its Preliminary Objections thereby effectuating a de facto taking of the property as of December 1, 1989. The City and PHC are now litigating the fair market value of the property in the Court of Common Pleas.

At trial, testimony and exhibits amplified and added to the above facts to the extent that the evidence of improper activities and unlawful conduct of PHC was truly overwhelming.

Larry K. Stefl, of the County Health Department testified that the Department became aware of PHC's activities around the middle of July, 1989, and based upon an inspection on July 20, 1989, he concluded that there were environmental and health violations. The Health Department referred the matter to DER, and on July 27, 1989, a DER inspector cited PHC for failure to have erosion and sedimentation control mechanisms in place, citing violations of the Environmental Resources Erosion Control Regulations, 25 Pa. Code § 102.1 et seq., adopted under authority of the Clean Streams Law, Pa. 35 P.S. § 691.1 et seq. The DER inspector also issued an Earth Disturbance report which set forth specific violations of environmental laws and regulations (App. 5). *It is critically important in this case on the issue of whether the City violated PHC's civil rights, that two governmental entities,*

totally independent of the City and acting initially without the knowledge of the City, concluded that there were serious violations of health and environmental laws. The citations directed PHC to submit a statement within fifteen (15) days as to how it intended to cure the violations and comply with law, but PHC *never* responded to the citations.

The most serious of PHC's operations as they related to public health was that during the land operations the septic systems of two adjoining houses were disrupted resulting in human fecal matter being discharged to the surface. PHC denied responsibility, but it was undisputed that the disruptions and discharges began during PHC's operations. PHC refused to permit public authorities to enter upon its property in order to abate the condition. This reprehensible condition continued for a period of approximately eight (8) months from July, 1989 through March, 1990, despite rising public clamor and political calls for an end to the situation. Finally, by letter of February 28, 1990, the County Health Department cited Ace and ordered it to abate the condition (App. 7). By letter of March 20, 1990, the Health Department cited PHC and ordered it to abate the condition (App. 9). In response to those citations, PHC granted an easement for a sewer line, and the City then installed public sewage at a cost of $48,000.

By letter of July 24, 1989, from the Deputy Director of the County Health Department to the Mayor of the City, the Department advised the City of its inspection on July 20, 1989 and directed the City's attention to possible violations of laws and regulations and other potential impacts upon public safety such as the stability of an

adjoining hillside, the adequacy of fire protection for the homes adjacent to the site and possible impact on bridge supports in the area (App. 11).

During PHC's operations, a steep hillside adjoining the property became unstable and landslides occurred. PHC denied responsibility, and contended that its operations did not involve cutting into the hillside. The City produced uncontradicted expert testimony which showed that in fact cuts had been made in the hillside. Significantly, the July 24, 1989 letter from the Health Department questioned whether the hillside was stable and would remain stable. A City Engineer testified that there were landslides patently visible and fissures in the ground, and the City's former superintendent of BBI testified that there were fissures visible in the ground. The seriousness of the landslide was compounded by another PHC dereliction. In May, 1989, PHC applied for a Parking Lot License, and the application contained a question as to whether the property was in a landslide prone area. Despite such question, PHC, although it knew that the area was landslide prone and in fact had knowledge of prior landslides in the same area, answered "none" on the application. If the question had been answered truthfully, in conjunction with issuance of the Permit, appropriate conditions could have been attached to ensure against another landslide.

The sewage discharge problem continued from its onset and finally by letter of October 6, 1989 (App. 14), the County Health Department wrote the Mayor advising that the presence of malfunctioning/inadequate sewage disposal systems had been verified and advised *"that this discharge of sewage poses a potential danger to the health of the*

public since the sewage is accessible to insect vectors which may transmit diseases and constitutes a health hazard under the Local Health Administration Law, Act 315". (emphasis added) The City was further advised that the sewage discharge constituted a violation of the Pennsylvania Clean Streams Law, Pa. 35 P.S. § 691.1, and the Pennsylvania Sewage Facilities Act, Pa. 35 P.S.750.1. Most critically, the County advised that "Sewage within the confines of municipal boundaries is the responsibility of the municipality". Thus, the City was required as a matter of law to follow the County's direction and take necessary action to stop the discharge. At this point in time, October 6, 1989, the City had not taken action to revoke the Permit, and PHC had never responded to the DER citation which directed a response within fifteen (15) days of August 1, 1989. In fact, as admitted at trial, PHC never responded at all to the citations.

As a result of the October 6, 1989 letter, a meeting was held at the Health Department on October 24, 1989. That meeting resulted in a letter dated November 9, 1989 from the Health Department to the Mayor (App. 1), in which the Health Department stated that "The City should consider having Mr. Gross cease all activities until such time as he has addressed the concerns outlined above and is in compliance with all permit, planning, and operational requirements." Coincidentally, the City had by its own letter of November 9, 1989 revoked the Permit, but the Health Department's letter evidences unequivocally that it was the County which recommended revocation of the Permit prior to the City's actual revocation.

On October 20, 1989, representatives of the City Planning Department inspected the property, and Daniel T.

Sentz, an environmental engineer, reported his findings by memorandum of October 25, 1989, in which he recommended that all permits be revoked and all work stopped. (App. 17).

A review of the chronology of violations also shows that land operations were being conducted prior to July 27, 1989, the date on which PHC actually applied for a permit. That is proven by the Health Department inspection on or about July 20, 1989 and the DER inspection on July 27, 1989 which resulted in the citations.

The application for the Permit stated that the Special Inspector for the project was a licensed surveyor who had provided various surveys of the property for PHC, however, *the inspector never performed any inspection services at all.*

ARGUMENT

I. THE REASONS ADVANCED IN SUPPORT OF THE PETITION DO NOT MEET EVEN MINIMALLY THIS COURTS CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI.

The decision of the Court of Appeals was essentially fact based, but measured of course against the standards that a plaintiff must establish to prevail in a 42 U.S.C. § 1983 action. The court made this clear when it stated "Clearly the verdict was against the overwhelming weight of the evidence because there was no basis on which the jury could have found that the city deprived Panther Hollow of its substantive due process rights

under section 1983 by arbitrarily and irrationally revoking its permits". (Pet. 13a).

Sup.Ct.R. 10(c) states "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings. . . . " Also, the considerations set forth in Sup.Ct.R. 10(a) governing review on petition for certiorari relating to a decision of a Court of Appeals when applied to the facts of this case show unequivocally that the decision was not in conflict with that of another Court of Appeals, and that no important federal question is involved in this factual decision. For such reasons alone, certiorari should be denied.

II. THE COURT OF APPEALS DID NOT ERR IN CONCLUDING THAT SOL GROSS WAS NOT ENTITLED TO NOMINAL DAMAGES EVEN THOUGH THE JURY FOUND THAT HIS CONSTITUTIONAL RIGHTS HAD BEEN VIOLATED.

First, there is a fundamental misstatement of fact in the Petition. In both the first Question Presented for Review and in the title of Argument I (Pet. 22), Petitioners state that Sol Gross was arrested at the time he was served with a citation for working without a permit. This assertion is simply not true, and is not supported by any evidence. The sum and substance of the facts are that a building inspector, acting on orders from the superintendent of BBI, served a citation on Mr. Gross for working without a permit. Subsequently, the inspector, who was not regularly assigned to that geographic area, checked the file and learned that a permit had been issued to PHC, so he then withdrew the citation. A citation for

violation of a City Ordinance is a summary offense, the lowest form of offense in Pennsylvania, and a building inspector has no arrest powers. The incident can be accurately characterized as a mistake, amounting in law to at worst negligence, rather than as claimed here a denial of constitutional rights.

A review of the three cases cited by petitioners, *Carey v. Piphus*, 435 U.S. 247 (1978); *Farrar v. Cain*, 756 F.2d 1148 (5th Cir. 1985) and *Morrison v. Stepanski*, 839 F.Supp. 1130 (M.D. Pa. 1993) support Respondent's position on the issue at hand. Those cases stand only for the proposition that a plaintiff who has sustained a civil rights violation, but no actual injury is entitled to nominal damages *only when a fundamental right has been violated.* In *Carey* supra, this court held that denial of a hearing to a high school student suspended for twenty (20) days for possessing a marijuana cigarette, was a denial of a right so fundamental that nominal damages were appropriate even if he had engaged in some wrongdoing. Such can hardly be equated with the instant case wherein Mr. Gross, only a corporate officer, was a recipient of a citation for working without a permit, when in fact the citation was withdrawn when it was learned that the corporation had a permit.

Likewise, in *Farrar* supra and *Morrison* supra., the Fifth Circuit and Middle District of Pennsylvania respectively concluded that violations of fundamental rights were at issue, and therefore despite the absence of actual injury, nominal damages were appropriate. Those situations simply do not equate with the present facts, wherein a citation for a summary offense was issued mistakenly and then withdrawn.

III. THE COURT OF APPEALS DID NOT ERR IN CONCLUDING THAT THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

The City argued in the Third Circuit and that Court agreed "that given the outstanding DER citations and the findings of the Allegheny County Health Department, it is legally untenable that the jury could have found that the City acted in an arbitrary and irrational manner in revoking Panther Hollow's permits". (Pet.12a). Application of the standards requisite to establishment of a 42 U.S.C. § 1983 action to the facts established by Respondent at trial demonstrate the merits of the City's contentions in the Third Circuit. The Third Circuit has held consistently since *Rogin v. Bensalem Township*, 616 F.2d 680 (3rd Cir. 1980), that to establish a substantive due process violation, a plaintiff must prove: (1) the governmental action was not rationally related to a legitimate government interest, or (2) the governmental action was motivated by bias, bad faith or improper motives. The Circuit reaffirmed such standards in many cases including *Pace Resources v. Shrewsbury Township*, 808 F.2d 1023 (3rd Cir. 1983); *Midnight Sessions Ltd. v. City of Philadelphia*, 945 F.2d 667 (3rd Cir. 1991); *Parkway Garage, Inc. v. The City of Philadelphia*, 5 F.3d 685 (3rd Cir. 1993) and *Blanche Road Corporation v. Bensalem Township*, 57 F.3d 253 (3rd Cir. 1995). The Third Circuit was virtually compelled to reach its conclusion because, if for no other reason, two independent governmental entities, the State DER and Allegheny County Health Department acting independently of the Respondent City, issued citations against PHC for

violations of State law and regulations and County ordinances. Further, contrary to petitioners' assertions, such violations of law were also violations of applicable City ordinances, and State law specifically vested in municipalities the right, if not the duty, to enforce such laws and regulations. This is evidenced by the Pennsylvania Sewage Facilities Act, Pa. 35 P.S. § 750.15, which provides in relevant part, as follows:

> "Nothing in this act shall be construed as estopping the . . . solicitor of a local agency from proceeding in courts of law or equity to abate nuisances forbidden under this act, or abate nuisance under existing law. It is hereby declared to be the purpose of this act to provide additional and cumulative remedies *to abate public health hazards and pollution of the waters of this Commonwealth,* and nothing in this act contained shall in any way abridge or alter rights of actions or remedies now or hereafter existing in equity, or under the common law or statutory law, criminal or civil, nor shall any provision of this act, for the granting of any permit under this act, or any act done by virtue of this act, be construed as estopping the . . . municipalities, in the exercise of their rights under the common law or decisional law or in equity, from proceeding in courts of law or equity *to suppress nuisances or public health hazards or to abate any pollution now or hereafter existing, or enforce common law or statutory rights,* [emphasis added]

The egregious nature of some of PHC's acts cannot be overemphasized in terms of their impact upon public and environmental welfare. By way of example, the disruption of sewage systems which resulted in the discharge of

human fecal matter for a period of approximately eight (8) months was itself sufficient reason to have revoked the permit at any time during such period. This is particularly so when the County Health Department advised the City that such discharge was accessible to insect vectors which would cause a danger to public health and welfare.

Petitioners' assertion that the Circuit decision was violative of the Seventh Amendment to the United States Constitution is without merit as an appellate court can and should grant a new trial where the verdict is against the overwhelming weight of the evidence. *Yohannon v. Keene Corporation,* 924 F.2d 1255 (3rd Cir. 1991).

Importantly, the Third circuit noted that it was not only the City that saw a problem on the property because even an engineering firm hired by PHC, GeoMechanics, Inc., stated in a written report "that dangerous and hazardous conditions have not been created to the degree indicated by the City of Pittsburgh." (Pet. 10a).

The Court of Appeals aptly summarized the nature of this case and the obviously required result when it stated that "Indeed, as we have pointed out, Gross' representative knew that there were serious problems on the property. It is simply not tolerable for a land use dispute of this kind to be packaged as a civil rights case under 42 U.S.C. § 1983". (Pet. 16a-17a).

CONCLUSION

For the foregoing reasons, this Court should deny petitioners' Petition for Writ of Certiorari.

Respectfully submitted,

GEORGE R. SPECTER, Esquire
Counsel of Record
Deputy City Solicitor
JACQUELINE R. MORROW, Esquire
City Solicitor

City of Pittsburgh
Department of Law
313 City-County Building
414 Grant Street
Pittsburgh, PA 15219
(412) 255-2019

ALLEGHENY COUNTY HEALTH DEPARTMENT
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director

3333 Forbes Avenue
Pittsburgh, PA 15213
Phone: 578-8030

November 9, 1989

City of Pittsburgh
Office of the Mayor
City County Building
Pittsburgh, PA 15219

ATTENTION: The Honorable Sophie Masloff, Mayor

RE: EXCAVATION SITE
PANTHER HOLLOW
CITY OF PITTSBURGH

Dear Mayor Masloff:

On October 24, 1989, a meeting was held at this office to discuss the Notice of Violation issued to the City of

Pittsburgh on October 6, 1989 regarding sewage discharges from septic systems at 27 and 29 Swinburne Street. At that meeting the representatives of the City of Pittsburgh and this Department specified on the attached list discussed the following problems relative to excavation operations conducted by Mr. Sol N. Gross, Ace Demolition, Inc. along Boundary Street in Panther Hollow.

1. Sewage discharges from septic systems at 27 and 29 Swinburne Street have resulted from excavation activities by Mr. Gross. Repair or replacement of these on-lot systems is impossible, and the City does not have accessible sewer tap-ins for these facilities. As public sewer lines are present in the area, this Department requests the City to provide accessible tap-ins for these structures to eliminate this health hazard.

2. Manholes for City of Pittsburgh sewer lines in the area are now below the new grade provided by Mr. Gross's filling operations. The stress that the increased earth load on these lines may pose must be evaluated and the manholes extended to make them accessible for routine maintenance at the new grade level. City representatives indicated that Mr. Gross has not been given the approval required for this work.

3. Fire hydrant(s), and possibly valves, for Pittsburgh public water lines have also been placed below the new grade level and must be raised to make these accessible at the new grade level.

4. No storm water management system appears to be in place, and substantial alteration of the natural hillside has been made, raising concerns regarding the potential destabilization of the hillside and the effect on down-grade properties. The Allegheny County Conservation District has verified the activities of Mr. Gross to be in violation of Erosion Control Regulations of the Pennsylvania Department of Environmental Resources adopted under the Pennsylvania Clean Streams Law. These violations include failure to provide an Erosion and Sedimentation Control Plan, failing to stabilize critical areas, and allowing sediment to flow into waters of the Commonwealth.

Your letter dated October 11, 1989 indicated that Louis Gaetano, Director, Department of Public Works, has been requested to address the sewage issues relative to 27 and 29 Swinburne Street. However, the remaining issues reviewed during the October 24th meeting lay within the jurisdiction of several City of Pittsburgh Departments including Highways and Sewers, Public Works, Planning, and Building Inspection. Therefore, we request that the Mayor's Office coordinate the various City agencies having jurisdiction in these matters to insure that Mr. Gross addresses all public drinking water, sewage, environmental, and public safety issues prior to further activity on his part. The City should consider having Mr. Gross cease all activities until such time as he has addressed the concerns outlined above and is in compliance with all permit, planning, and operational requirements.

Please contact me as soon as possible of your intentions regarding these issues, as this Department continues to be very concerned about the effect of Mr. Gross's activities on the public health and safety of the residents of this area of the City.

Should you have any questions or desire additional information or consultation, please contact me at 578-8030.

Sincerely,

/s/ Gerald M. Barron
Gerald M. Barron,
Deputy Director
Environmental Health
Services

ph

Attachment

cc: L. Gaetano
P. McDermitt

VIOLATION NOTICE
EROSION AND SEDIMENTATION CONTROL

ALLEGHENY County File No. _____

PITTSBURGH Municipality Inspection Date 7/27/89
Violation Notice Date
8/1/89

Project Description ACE DEMOLITION EARTHMOVING SITE

Location PANTHER HOLLOW – BOUNDARY ST.

Landowner and/or Responsible Official SOL GROSS,
Name

LANDOWNER
Title

An inspection of earthmoving activities being conducted at the above project site has revealed that the erosion and sedimentation controls at the site are not adequate to meet the requirements of the Department of Environmental Resources' Erosion Control Regulations contained at 25 *Pa. Code* § 102.1 *et seq.* and adopted under authority of the Clean Streams Law, the Act of June 22, 1937, P.L. 1987. You are hereby notified that your failure to correct these violations of the Erosion Control Regulations noted below within 15 days of the date of this notice may subject you to enforcement action and penalties under the Clean Streams Law, with each day of violation constituting a separate offense. A statement setting forth the steps which have been taken to correct these violations must be submitted to the ALLEGHENY COUNTY conservation district, 208 INA BLDG., PARKWAY CTR.,

PGH., PA within 15 days of the date of this notice.
15220
A follow-up inspection will be conducted to determine compliance.

The following checked items were found in violation and must be corrected:

X No Erosion and Sedimentation Control Plan (25 *Pa. Code* § 102.4). A copy of your plan must be submitted within 15 days of the date of this notice.

_ Inadequate Erosion and Sedimentation Control Plan (25 *Pa. Code* § 102.11). A copy of your revised plan must be submitted within 15 days of the date of this notice.

_ Erosion and Sedimentation Control Plan not implemented.

X Critical areas not stabilized (25 *Pa. Code* § 102.12(a))

_ Sedimentation basin full of silt (25 *Pa. Code* § 102.13(a))

_ No sedimentation basin (25 *Pa. Code* § 102.12(t))

_ No diversion ditches (25 Pa. Code § 102.12(b))

X Sediment flowing in state waters

_ _____

/s/ Harry R. Barnett
Inspector

_____

ALLEGHENY COUNTY HEALTH DEPARTMENT
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M. KATHLEEN WINTER, Ph.D., R.N.
MARGOT WOODWELL

3333 Forbes Avenue
Pittsburgh, PA 15213
Phone: 578-8026

February 28, 1990

CERTIFIED MAIL

Ace Demolition Company
1807 Wightman Street
Pittsburgh, PA 15217

ATTENTION: Sol Gross

RE: **COMPLIANCE ORDER**
PANTHER HOLLOW
BOUNDARY STREET
CITY OF PITTSBURGH

Dear Sir:

Excavation activities by the Ace Demolition Company at the Panther Hollow Boundary Street proposed parking lot removed the leach field for the subsurface sewage disposal systems (septic systems) serving properties known as 27 and 29 Swineburn Road. The removal of the leach fields has created a public health hazard by allowing raw sewage to be discharged directly to the ground.

Under the authority of the Allegheny County Health Department, you are hereby ordered to correct and abate the health hazard caused by the actions of the Ace Demolition Company by March 23, 1990.

Sincerely,

/s/ Gerald M. Barron
Gerald M. Barron,
Deputy Director
Environmental Health
Services

st
cc: John W. Schombert, ACHD, PDWWM
Mary Contura, Solicitor, City of Pittsburgh
Larry K. Stefl, ACHD, Central District

ALLEGHENY COUNTY HEALTH DEPARTMENT
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MARGOT WOODWELL

3333 Forbes Avenue
Pittsburgh, PA 15213
Phone: 578-8026

March 20, 1990

CERTIFIED MAIL

Panther Hollow Corporation
1807 Wightman Street
Pittsburgh, PA 15217

ATTENTION: Sol Gross

RE: **COMPLIANCE ORDER**
PANTHER HOLLOW
BOUNDARY STREET
CITY OF PITTSBURGH

Dear Sir:

Excavation activities by the Panther Hollow Corporation at the Panther Hollow, Boundary Street proposed parking lot removed the leach field for the subsurface sewage disposal systems (septic systems) serving properties known as 27 and 29 Swineburn Road. The removal of the leach fields has created a public health hazard by allowing raw sewage to be discharged directly to the ground.

Under the authority of the Allegheny County Health Department, you are hereby ordered to correct and abate the health hazard caused by the actions of the Panther Hollow Corporation by April 20, 1990.

Sincerely,

/s/ Gerald M. Barron (gwl)
Gerald M. Barron,
Deputy Director
Environmental Health Services

st
cc: John W. Schombert, ACHD-PDWWM
Mary Contura, Solicitor, City of Pittsburgh
Larry K. Stefl, ACHD-Central District

ALLEGHENY COUNTY HEALTH DEPARTMENT
[LOGO]

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3333 Forbes Avenue
Pittsburgh, PA 15213
Phone: 578-8026

July 24, 1989

CITY OF PITTSBURGH
OFFICE OF THE MAYOR
513 City-County Building
Pittsburgh, PA 15219

ATTN: Mina Gerall
Executive Assistant

RE: Excavation In
Panther Hollow
Pittsburgh

Dear Ms. Gerall:

In response to a complaint, an inspection of the referenced property was conducted on July 20, 1989 by representatives of this Department.

That inspection revealed that extensive excavation and fill operation being conducted by Mr. Sol Gross, Ace Demolition. Briefly, the excavation involves moving the earth from the hillside into the valley. In some areas as much as 20 feet of fill has been placed on top of Boundary Street.

The investigation prompted several concerns:

- Does Mr. Gross have all the necessary permits?
- Is the filling operation being conducted in a controlled manner?
- Is the hillside stable, and will it remain stable?
- Is adequate fire protection available for the homes adjacent to the site?
- Will the excavation have an impact on the bridge supports in the valley?
- Is there a storm water management plan or erosion control plan in place?

Already, it seems that at least two septic systems have been damaged.

I refer these conditions to your attention and request you coordinate appropriate responses by all City of Pittsburgh agencies having jurisdiction over the above. I recommend that a meeting at the site be initiated to ensure a

cohesive response to the project. Certainly the Health Department would like to participate in such a meeting.

I thank you in advance for your assistance and ask that you keep me posted on the status of your investigation. If I can be of any assistance, please do not hesitate to contact me at 578-8030.

Sincerely,

Gerry
/s/ Gerald M. Barron
Gerald M. Barron
Deputy Director
Environmental Health
Services

mmg
cc: Harry Barnett
Allegheny Co. Conservation District

J. Kish, Health Officer
Central District

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director

3333 Forbes Avenue
Pittsburgh, PA 15213
Phone: 578-8047

October 6, 1989

PROOF OF MAILING

City of Pittsburgh
Office of the Mayor
City County Building
Pittsburgh, PA 15219

ATTENTION: The Honorable Sophie Masloff, Mayor

RE: NOTICE OF VIOLATION
27 AND 29 SWINBURNE STREET
4TH WARD, PITTSBURGH

Dear Mayor Masloff:

This office recently verified the presence of malfunctioning/inadequate on-lot sewage disposal systems at the subject properties which are located in the Panther Hollow section of Oakland. The malfunction located at 29 Swinburne is directly attributable to excavation operations conducted by Sol N. Gross, Ace Demolition Incorporated, pursuant to the construction of large parking lot facility which has substantially altered Boundary Street and increased the depth of the current municipal sewer line.

Please be advised that this discharge of sewage poses a potential danger to the health of the public since the sewage is accessible to insect vectors which may transmit diseases and constitutes a health hazard under the Local Health Administration Law, Act 315. In addition, this sewage discharge constitutes a violation of the Pennsylvania Clean Streams Law, Section 201 and 202, and the Pennsylvania Sewage Facilities Act, Section 5 and 10. Sewage within the confines of municipal boundaries is the responsibility of the municipality.

Therefore, we request that the city provide an accessible public sewer connection for the subject properties. It is our desire to work with the City of Pittsburgh toward resolution of this matter in an expedious manner.

Therefore, a conference has been scheduled for 1:30 p.m., October 24, 1989 at this office to review this matter with you. We request that the appropriate City of Pittsburgh officials be available to attend. Should the above scheduled date be inconvient or should you have any questions, please contact this office.

Sincerely,

/s/ John W. Schombert
John W. Schombert, Chief
Public Drinking Water &
Waste Management

LKS/ph

cc: M. Gerall
P. Imhoff
L. Gaetano
bcc: W. Bancroft
N. Clark
R. Erlwein
J. Kish
J. Fagnelli
G. Butia
L. Stefl

MEMORANDUM

TO: Jane Downing
Paul Farmer
Maureen Hogan

FROM: Dan Sentz

DATE: 25 October 1989

SUBJECT: Panther Hollow; Allegheny County Health Department (ACHD) Meeting On Actions By Gross Which Have Created A Health Hazard

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Yesterday Tony Tarasi (DPW), Dave Borneman (DEC) and I met with John Schombert (ACHD) and four other Health Department officials to discuss a course of action to address a Panther Hollow health hazard created by Sol Gross. This hazard has been created as a result of the excavation work Mr. Gross performed in Panther Hollow in the vicinity of Swinburne Street. Two homes had functioning septic systems before Gross excavated their drainage fields. (Septic systems are composed of a septic tank and a drainage field.) While the fields were wholly or partially on Mr. Gross's property his excavation is of dubious legality. ACHD lawyers believe the two affected residences could successfully sue Gross for his creation of the health hazard and destruction of their property. (Lawyers themselves were not at the meeting so I'm not sure if the basis for the legal action would be "squatters rights", the creation of a health hazard, or some long forgotten easement.)

The City is now responsible under State Law for providing sewers to the two residences. A new septic system

drainage scheme is not feasible due to the small size of the two affected properties and the slope, and it could cost as much as the sewer connection if attempted.

There are City sewers in the area and laterals could be extended to the property line of the two homes, providing we get an easement from Gross. Typically the City would assess the property owners (the two residences and Gross) in an area where sewerage was made available. Additionally the two homes would be responsible for connections from the homes to the City laterals. The occupants of the homes are elderly, on welfare and almost certainly not able to pay for there connections let alone the sewerage extension assessment. The total cost would almost certainly exceed the value of their properties.

We could buy the two homes but the people, as would be expected with elderly who have been living there all their lives, don't want to sell. Further, this is probably just what Gross would want; get them out of his way. Instead the City should explore assessing Gross for the entire sewerage cost. He should be prevented from opening his parking lot until the sewerage is in place as he has created a health hazard.

Health Department personnel also noted that Gross had excavated the slopes and removed vegetation from the same. I noted this last Friday also. While I did not go above the Anderson Bridge ACHD people said they noted excavation triggered slope movement in that vicinity with the potential to adversely affect three more homes and the sewer which serves them.

Attached you will find a copy of the Land Operations Permit issued to Gross by Jim Brown 27 July 1989. You

will note that it was a permit to fill only; excavation is lined out in two places and the section on vegetation removal on steep slopes is blank. Further 16000 c.y. is the limit of the permitted fill. The slopes were excavated, vegetation was removed from them and the fill was approximately seven and one-half times that permitted (a very conservative estimate).

Additionally the slopes are in the Landslide Prone Overlay District and the regulations pertinent to this Zoning District were ignored. (City and ACHD personnel have indicated the Gross fill depth is 20 to 30 feet in much of the Hollow.) Finally he excavated up to the property lines which is not permitted by City regulations.

I suggest Gross have all permits revoked and all work stopped as a result of his excessive exceedence of what he was permitted to do. I further suggest that Jim Deglau be prevented from ever acting as a Special Inspector on any project in the City again. To claim what was done is in conformance with the permit either reflects incompetence or lack of credibility. (Copies of the other project related zoning applications are attached.)

The ACHD has had numerous experiences with Gross and none of them have been positive. He has repeatedly violated ACHD regulations related to solid waste disposal (dumping) and has apparently ignored court orders. Gross has no credibility with the Health Department and they have suspicions that part or all of what was to be hauled out was buried. (ACHD personnel did see a few tires in the fill.) Since Degau cannot be trusted as a Special Inspector and given the experiences of the

ACHD I think several core borings at Gross's fill site are appropriate to ascertain if the fill is "clean".

The ACHD is writing to the Mayor requesting that all Gross's approvals be rescinded until the health hazards he has created are addressed. I think we should rescind all approvals until all problems Gross has created are addressed not only on paper but via physical construction implementation of mitigating measures.

1. The fill should be evaluated via core borings.
2. The water line should be constructed.
3. The sewer(s) should be constructed.
4. Hillside stability should be evaluated and mitigating implemented; including an assessment of any damage Gross may have caused the five affected homes and City infrastructure.
5. All road and manhole work should be completed.
6. The regulations of the Landslide Prone District should be satisfactorily addressed.
7. An after the fact Conditional Use Process (as is required for major excavation such as this) should be completed.

The overwhelming message from ACHD is don't trust Gross; he has no credibility. Both Zoning and BBI seem to feel Gross is doing something good for the City. Gross's actions have been physically, socially, and legally detrimental to the City. Credibility in our approval and inspection procedures has suffered significantly on this project. I suggest a representative from the City Law

Department be involved in all future meetings of any sort on this project and all approvals related to this project be approved directly by Jane or Paul.

DS/ljs

cc: Tony Tarasi, Public Works
Dave Borneman, Engineering & Construction
John Schombert, Allegheny County Health Department
Jim Brown, Zoning